

## **§ 308.510**

§ 308.508(a) of this subpart, the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ will promptly serve on defendant in the manner prescribed in § 308.507 of this subpart, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ will assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 308.502 of this subpart, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision will become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision will be stayed pending the ALJ's decision on the motion.

(f) If, in the motion to reopen under paragraph (e) of this section, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ will withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and will grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion to reopen under paragraph (e) of this section is not subject to reconsideration under § 308.537 of this subpart.

(h) The decision denying the motion to reopen under paragraph (e) of this section may be appealed by the defendant to the Board by filing a notice of appeal with the Board within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal will stay the initial decision until the Board decides the issue.

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(i) If the defendant files a timely notice of appeal with the Board, the ALJ will forward the record of the proceeding to the Board.

(j) The Board will decide whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Board decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the Board will remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Board decides that the defendant's failure to file a timely answer is not excused, the Board will reinstate the initial decision of the ALJ, which will become final and binding upon the parties 30 days after the Board issues such decision.

### **§ 308.510 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official will file the complaint and answer with the ALJ. The reviewing official will include the name, address, and telephone number of a representative of the Corporation.

### **§ 308.511 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ will promptly serve a notice of hearing upon the defendant in the manner prescribed by § 308.507 of this subpart. At the same time, the ALJ will send a copy of such notice to the representative of the Corporation.

(b) The notice will include:

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Corporation and of the defendant, if any; and

(6) Other matters as the ALJ deems appropriate.